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UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 07-50117-RHB
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
LISA HIGH WOLF,)	
)	
Defendant.)	

Defendant filed a motion to dismiss the indictment in this case, Docket #33, which the Court denied in an order issued on April 25, 2008. Docket #43. The Court now wishes to reconsider its earlier ruling denying the motion to dismiss.

The indictment in this case provides as follows:

On or about the 1st day of November, 2007, at Pine Ridge, in the District of South Dakota, the Defendant, Lisa High Wolf, **knowing that an offense against the United States has been committed**, did receive, relieve, comfort, and assist the offender, Clayton High Wolf, in order to hinder and prevent the offender's apprehension, trial, and punishment, in violation of 18 U.S.C. § 3.

Docket #1 (emphasis added). The Court, in its independent research, is in doubt as to the validity of this indictment. See United States v. McLennan, 672 F.2d 239, 243 (1st Cir. 1982) ("We observe initially that an indictment charging one as an accessory after the fact must plead the underlying offense . . . as well as the accessory offense.") (citing United States v. Balano, 618 F.2d 624, 633 (10th Cir. 1979)); United States v. Hill, 279 F.3d

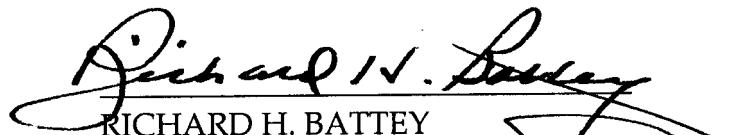
731, 740-41 (9th Cir. 2002) ("We hold that the underlying offense is an essential element that must be pleaded."). However, out of the abundance of caution, the Court will require further submissions on this issue. Accordingly, it is hereby

ORDERED that defendant shall file a supplemental submission by May 15, 2008. The government shall file a response by June 2, 2008. Defendant shall reply by June 10, 2008.

IT IS FURTHER ORDERED that pending resolution of this issue, the case is continued until further order of the Court.

Dated this 10th day of May, 2008.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE